THE COLLECTION OF DUTIES IN THE UNITED STATES.[1]

THE recent Special Report of the Secretary of the Treasury on the Collection of Duties treats of the verification and authentication of invoices by the consular service, the entry of merchandise, its appraisement in the case of *ad valorem* duties, the final assessment of duties, suits against collectors, and deterrent legislation against frauds on the revenue. It is a criticism of existing methods, and to some extent a defense of those measures taken to enforce the laws which have met with the opposition of importers.

The Secretary points out (pages iii and xviii) that the weakest points in the laws are the means taken to ascertain the value of goods on which duties are to be assessed. These are:

(1) The obligation imposed on all importers, to declare the value of invoices;

(2) The requirement that all invoices shall be authenticated by our consular officer nearest the place of shipment; and

(3) The appraisement of the goods by customs officers at the time of importation.

With regard to the first, the Secretary shows by a historical review of the different customs laws that the obligation to declare the value of goods has been imposed on the importer from the very beginning. In 1823 the distinction was made between merchandise purchased abroad by the importer, and goods imported by the manufacturer himself. In the latter case the intention of all laws since 1823 has been to find from the owner the "fair market value" of the goods at the time and place they were procured or manufactured; in the former, to get from the shipper of purchased goods an account of the actual transaction by which he obtained them. Great difficulty

[1] Report of the Secretary of the Treasury on the Collection of Duties, 1885.

seems to have arisen in the ascertainment of the "fair market value," though the courts have given plain rules (page vii) by which manufacturers are to be guided. The Secretary proposes no remedy, but seems to think the apparent difficulty arises simply from the fact that foreign manufacturers and home buyers are willing to connive at fraudulent and undervalued invoices in order to obtain cheap goods. He regards a true and correct invoice as essential to an honest enforcement of the existing complicated tariff law, and believes the present system must be maintained.

As to the consular authentication of invoices, his criticisms are very severe. He shows (page ix) that this means was not adopted till 1818, and that it has not been at all efficient. It is difficult, if not impossible, to prosecute abroad an offense against our tariff laws; it is impossible for consular officers, no matter how expert in values, to adequately inspect merchandise in the large cities of Europe, where a great number of invoices are daily presented; and to rely on samples presented by shippers may, when these are dishonest, be very misleading. Again, on account of the habit which has sprung up of requiring fees for this consular authentication of invoices, there is often an unseemly scramble by consular officers for these fees, which, as the Report shows (pages xiii and 425), go into their own pockets. The result is that consuls will grant as favorable terms to shippers as possible, to the great detriment of the revenue; and since the consular service is not under the control of the Treasury Department, it is difficult for that Department to enforce the observance of the tariff laws. In reference to this method of ascertaining values, the Secretary says:

> One effect of the legislation of Congress and the instructions by the Department of State . . . has been to lead shippers who are abroad, as well as appraising officers who are at home, to look or to pretend to look upon consular officers as in effect customs appraisers in a foreign country, whose verifications of invoice values are to be received with a credit and authority which they really do not and cannot deserve. As it is now, the shipper misleads consular officers; and they in consequence mislead appraising officers, who return false values and classifications to the collectors. (Page xvi.)

The final step in the ascertainment of values is the appraisement. As seven-tenths of the whole customs revenue is collected in the port of New York (page xl), the Secretary devotes his entire attention to the method there adopted. This, excepting in some instances the designation of officers, is substantially the same at the other ports (page xix).

The method is as follows: The collector is to designate on the invoice packages for examination and appraisement; and these are sent to the appraiser who by law[1] is to make the appraisement. The practice, as evidenced by the Treasury Regulations of 1884, article 455, is that one of the ten assistant appraisers is to certify the appraisement; but the examiners, who were provided by a law of 1866[2] to replace simple clerks, are really the only officers who examine the goods and therefore in fact the only appraising officers. The Secretary thinks that this is not only illegal but unjust; for the examiners are paid such small salaries that it is impossible to obtain men competent to appraise imported goods. He says (page xxii) that the range of salaries paid in New York by the large importing and jobbing houses in the city to those who are deemed competent to buy merchandise abroad is twice or even three times as high as is the range of salaries paid to examiners in the New York Custom House who examine similar articles. He complains also that these examiners are too apt to accept as the dutiable value the value fixed by the shipper and maker of the invoice and certified by the consular officers.

It will be observed that by this system of appraisement the finding of the question of fact, *i.e.*, the actual dutiable value of the goods, is entrusted to government officers exclusively. Their tendency is of course to make the interest of the government their own, and thus, in those cases where they do actually inspect goods, to make the valuation as high as possible. In order now to allow the importer to be represented, the policy of our laws has always been to permit an appeal from the decision of the appraisers to a body over whose formation the importer should have some control, or in which his interest should be repre-

[1] 9 Stats. at Large, 630. [2] 14 Stats. at Large, 302.

sented. This was done in all the customs laws previous to 1851, either by allowing the importer to select a merchant appraiser who should act on the board of re-appraisement, or by forming the board entirely of merchant appraisers, whose interest was of course to keep the valuations as low as possible. The law of 1851[1] changed this by putting in the hands of the collector the appointment of the one merchant appraiser on the board. As the other member of the board is the general appraiser, a government officer, the entire control of re-appraisement proceedings is in the hands of government officers or persons appointed by them. The importer thus is no longer represented. This has been aggravated in two ways:

(1) The Treasury Regulations of 1884, article 1415, provide that, in these cases of appeal to the reappraising board, the local appraiser is to submit to the collector a list of names of merchant appraisers. This list is prepared by the examiner or assistant appraiser (page xxvii); and from this list the collector, in most cases, selects the merchant appraiser. So the appointment of this person, who is supposed to represent the importer's interest, is really made by the very officer whose decision is appealed from.

(2) The Secretary, by a letter of June 9, 1885 (Appendix to Report, page 98), forbids importers to be represented before the board by attorneys or custom-house brokers, permitting the appearance only of employees or salesmen familiar with facts touching the question under consideration. Their statements, and those of the witnesses called by the appraisers, are to be "taken in the presence of official persons only." Witnesses may not be cross-examined by importers.

The result of these laws and decisions is, then, that the re-appraising board has become purely official in character, and is used simply in the interest of the government. Further, if there is disagreement in the board — which can always be caused by the general appraiser, the agent of the government — the collector, another government agent, is to decide. When it is remembered that the re-appraisement is final, and that if

[1] Rev. Stats. sec. 2930.

it exceeds by ten per cent the entered value a duty of twenty per cent in addition to the regular duty must be levied, it will be seen that there is another side of the question which Secretary Manning does not see. He, being an honest and efficient officer, sees simply the side of the government. He sees those defects in the laws by which the government may be, and probably is, defrauded of its revenue. He forgets that the rights of the individual are not sufficiently protected.

Is it possible to find a method of appraising goods by which the rights, both of the government and the importer, will be protected? The experience and practice of other nations may perhaps give us the answer. The principle of the customs laws of England, France and Germany is to confine the discretion of customs officers within the narrowest possible limits. To do this, the laws give a detailed enumeration of the objects on which duties are to be imposed and of the rates of those duties. They eliminate, where it can be done, the question of fact. Specific duties are therefore adopted. In the English law, only specific duties appear to be imposed. In the French and German laws, however, this cannot be done; since the tariff is there protective, and must therefore include a greater variety of objects. Where *ad valorem* duties are thus unavoidable, the method is as follows:

By the French law, the declaration or entry of the importer is taken as the valuation on which the duty is to be assessed. If, however, the customs officers believe that there has been an undervaluation, they have the right to take the goods at the valuation given by the importer with an additional five or ten per cent, and after paying such sum to sell them for the benefit of the government.[1] This right is called the *droit de préemption.* This method is too arbitrary to be of great value. An importer may not wish to sell his goods at that price; and the government may lose, as goods at a forced sale will not often bring a fair price.

The German method seems to be fairer. It is based on the same principle which pervaded our own laws before 1851. In

[1] L. 4 floréal, an IV. and L. July 2, 1836.

the German, as in the French law, the entry of the importer is the basis of the valuation on which the duties are to be assessed. If there is thought to be an undervaluation, the customs officers have the same *droit de préemption.* But both they and the importer may, if they prefer, ask to have an appraisement of the goods made by experts. Of these there are to be two, one appointed by the importer, the other by the local customs officers. If these experts cannot agree, they are to appoint an umpire. If they cannot agree in the appointment of such umpire, he is to be designated by the president of the court of commerce, or, where there is none, by the presiding judge of the civil court of first instance. Now, if the decision reached by these experts shows that the actual value of the goods does not exceed by five per cent the declared valuation, the duties are to be assessed on such declared valuation, and the costs of the appraisement are to be paid by the customs office. If, however, the appraised value does exceed the declared value by at least five per cent, the customs officers may make use of their *droit de préemption,* or may assess the duties on the appraised value; while, if the appraised value exceeds by *ten* per cent the declared value, the rate of the duties to be assessed is to be increased fifty per cent. In both these cases the importer is to pay the costs of the appraisement.[1]

This method is not at all foreign to our system. Our law formerly permitted the importer to designate one of the merchant appraisers. If this method were adopted, the consular authentication of invoices might be dispensed with, and with it the fees which have become a serious tax on shippers. In 1883 they were $926,054.95. (Report, page xv.) Again, the importer would be represented in the appraisement, and the appraisers would not be misled by consular certificates. In fact, our present system, under which this question of fact is decided by professional officials, is at variance with our whole law governing administrative matters. In almost all other cases, such questions are decided either by juries or by per-

[1] Bundesgesetzblatt, 1869, p. 317, § 93.

sons who, though officers, are chosen by the people or represent both parties. All questions of fact in the assessment of direct taxes are regularly so decided. Where property is taken for public use, its value is to be determined not by government officers but by commissioners who represent the individual as well as the government. Further, by this method use could be made of expert knowledge, which, according to Secretary Manning's Report (page xxii), we can hardly hope to find in the examiners.

Secretary Manning may be right in maintaining that the rights of the government are not sufficiently protected under the present system; but the fault is in the officers themselves. No nation has a system in which the appraising board is so completely in the control of the government; and the complaints of importers, relative to the Secretary's efforts to enforce the laws on which the system is based may well be understood.

There are two other important subjects treated in the Report. One is the final assessment of duties. This is made by the collectors at the several ports. The object of the law of 1799 which placed this duty upon these officers may have been, as Secretary Manning says (page xl), to provide for local self-government under the general supervision of the central government. But where local officers are appointed and removed at will by the central authority and are subject, as ours are now, to its direction, there is very little local self-government in the English and American sense. And where the duties of the collectors are so onerous as to absorb all their time, as is now the case in our customs service, we have a professional bureaucratic government. Originally it was not so. There was no appeal from the decision of the collector in his assessment of duties, except to the courts. And the appeal to the courts was simply in the nature of a civil action (for money had and received) against the collector, who was regarded as having taken advantage of his official position to extort money contrary to law. When, in 1839, it was provided[1] that collectors should not reserve money obtained from the collection of duties to pay

[1] Act, March 3, 1839.

any judgments found against them in such suits, but should pay within a given time all money received into the Treasury, the United States Supreme Court held that an action for money had and received would not lie against a collector, as he had simply obeyed the law to the best of his ability and it would be unfair to make him personally responsible for errors in judgment.[1] The individual, then, had no remedy; the collector's decision was final. This appeared to be too arbitrary; and, after one or two changes, an act of 1864[2] provided for an appeal, under certain conditions, from the collector's decision to the Secretary of the Treasury. This appeal was entirely of an administrative character. After the Secretary's adverse decision, the importer might bring an action, nominally against the collector, but really against the government — since the Secretary might pay such judgments, or refund duties illegally exacted. The development of this administrative control of the Secretary over the decisions of the collectors, and the practice which resulted therefrom of sending out special agents to inspect the actions of local officers, has undoubtedly tended to decrease their sense of responsibility — a result which the secretary deplores (Report, page xxxix) — and thus to destroy all local self-government. But this control has unquestionably made the service more efficient, and brought about a uniformity in the treasury decisions which otherwise could not have been obtained. It has also given the individual a very inexpensive remedy against the decisions of local officers. This he has now in addition to his judicial remedy, which was restored to him by the act of 1864.

This judicial remedy consists in an appeal to the ordinary courts where the principles of trial by jury are applied. Secretary Manning alludes to the suggestions made at various times by his predecessors either that the decision of the Secretary be final, or that a special tribunal be formed for the purpose of trying any appeals from such decisions. He is, however, in favor of the existing system, and bases his opposition to the

[1] Cary *vs.* Curtis, 3 How. 236.

[2] 13 Stats. at Large, p. 214; Rev. Stats. sec. 2931.

formation of a new tribunal mainly on constitutional grounds. He says he is advised that the constitution would forbid the taking away from an importer the right of trial by jury in a suit against a collector. But such a suit is only in name against the collector. It is in reality against the government, and the case already cited shows that no importer has the right to bring such an action. So, if it were believed to be advantageous to make these suits what they really are — suits against the government — there would be no constitutional objection to giving their decision either to the Court of Claims, or to some special tribunal. The remaining questions are simply questions of expediency and here views differ. Many decisions of juries in these customs cases would seem to show their unfitness for such cases.[1]

The remarks of the Secretary on the last subject of importance treated in his Report, *viz.*, suits against collectors, are well worthy of serious attention. All the delay in the prosecution of these suits seems to arise from the fact that the legal force of the government is not under the control of the department responsible for the collection of the revenue. Would it not be better, if there should be established a separate legal force, under the direct control of the Treasury, for the prosecution of revenue suits? Would it not be better, if the Solicitor of the Treasury were made what he once was, a subordinate of the Treasury Department, and were given the direction and control of all subordinate officers occupied with these matters? There is really no room in our system for a department of justice except for the prosecution of crimes, and it is very questionable whether anything has been gained by its formation.

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[1] See correspondence in relation to the best method of determining questions in customs revenue cases, 17 Court of Claims Reports.